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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Oversee the
Resource Adequacy Program, Consider
Program Refinements, and Establish Annual
Local and Flexible Procurement Obligations
for the 2016 and 2017 Compliance Years.

Rulemaking 14-10-010
(Filed October 16, 2014)

**OPENING COMMENTS OF
COMVERGE, INC., CPOWER, ENERNOC, INC., AND ENERGYHUB
("JOINT DR PARTIES") ON TRACK 1 PROPOSED DECISION**

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SUBJECT INDEX

	<i>Page</i>
Subject Index	i
Table of Authorities	ii
I. THE PROPOSED DECISION CORRECTLY ADOPTS THE ENERGY DIVISION’S PROPOSAL TO USE CONTRACT CAPACITY TO MEASURE RA CAPACITY FOR DR RESOURCES	1
II. THE PROPOSED DECISION’S DISPOSITION OF THE 20 MINUTE RESPONSE TIME REQUIREMENT FOR DR RESOURCES REQUIRES MODIFICATION AND CLARIFICATION	2
III. THE PROPOSED DECISION MUST BE MODIFIED TO DECIDE, AND NOT DEFER TO TRACK 2, THE UNBUNDLING OF EFFECTIVE FLEXIBLE CAPACITY (EFC) FROM NET QUALIFYING CAPACITY (NQC).....	10
IV. CONCLUSION.....	12
<u>APPENDIX A:</u> PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDERING PARAGRAPHS	

TABLE OF AUTHORITIES

Page

COMMISSION DECISIONS

Decision (D.)16-05-053	7
D.15-11-041	6, 7
D.14-03-004	5, 6

CPUC RULES OF PRACTICE AND PROCEDURE

Rule 14.3	1
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("JOINT DR PARTIES") ON TRACK 1 PROPOSED DECISION**

Comverge, Inc., CPower, EnerNOC, Inc., and EnergyHub ("Joint DR Parties")¹ respectfully submit these Opening Comments on the Track 1 Proposed Decision of Administrative Law Judge (ALJ) Dudney "Adopting Local and Flexible Capacity Obligations for 2017, and Further Refining the Resource Adequacy Program" in R.14-10-010 (Resource Adequacy (RA)) (Proposed Decision). The Proposed Decision was issued on May 20, 2016. These Opening Comments are filed and served pursuant to Rule 14.3 of the Commission's Rules of Practice and Procedure.

**I.
THE PROPOSED DECISION CORRECTLY ADOPTS THE
ENERGY DIVISION'S PROPOSAL TO USE CONTRACT CAPACITY
TO MEASURE RA CAPACITY FOR DR RESOURCES.**

The Joint DR Parties support the adoption by the Proposed Decision of the Energy Division's "revised proposal" to exempt demand response (DR) resources from use of the Load Impact Protocols (LIPs) for purposes of determining the qualifying capacity associated with the resource through the 2019 RA Compliance Year.² As reflected in the Proposed Decision, the Joint DR Parties, while offering an alternate proposal originally, "strongly support" the Energy

¹ In previous filings in this proceeding, the Joint DR Parties also included Johnson Controls, Inc. (JCI). However, on May 2, 2016, EnergyConnect, the division of JCI offering demand response services, was acquired by CPower and is now a wholly owned subsidiary of CPower.

² Proposed Decision, at p. 43.

Division's revised proposal and urge the Commission to adopt this portion of the Proposed Decision.³

II.
**THE PROPOSED DECISION'S DISPOSITION OF THE 20-MINUTE
RESPONSE TIME REQUIREMENT FOR DR RESOURCES
REQUIRES MODIFICATION AND CLARIFICATION.**

A. The Joint DR Parties Support the Examination Issues and Process Detailed in the Proposed Decision.

The Joint DR Parties agree with the direction provided by the Proposed Decision to the California Independent System Operator (CAISO) in terms of the issues that should be examined in the stakeholder process and agree that a Commission working group effort subsequent to the CAISO's stakeholder process is also a good idea.⁴ The Joint DR Parties also agree with the Proposed Decision that program and/or tariff changes may be required for DR programs administered by the Investor Owned Utilities (IOUs) pursuant to Commission regulation and for CAISO tariffs or rules that impact DR.⁵

B. The Joint DR Parties Agree that the Examination Conducted by the Commission Must Look at Normal Operating Requirements Versus Requirements that Are Necessary in a Post-Contingency Environment.

The Proposed Decision discusses a point that the Joint DR Parties made that tries to distinguish between normal operating conditions and pre- or post-contingency conditions.⁶ The question is: Do resources that qualify as local capacity resources have to meet a 20-minute dispatch requirement outside of a post-contingency event?

In placing a 20-minute dispatch requirement upon all resources all the time, it would reduce the number of resources that could participate as DR resources. In addition, the CAISO

³ Proposed Decision, at pp. 42-43.

⁴ Id., at pp. 38-39.

⁵ Id., at pp. 35, 38-39.

⁶ Id., at p. 37.

does not really have a market for clearing 20-minute resources, so the product itself is not compatible with the market structure. That said, when a post-contingency event occurs, a portion of the local capacity resources could be configured to provide a 20-minute response. It is not just a matter of a customer “choosing” or not choosing to participate as a 20-minute resource. It is a matter of the capability of the resource to be able to dispatch with a small amount of advanced notification without causing financial harm or security risks to the provider.

Just like all generating resources do not have the same operational characteristics, so, too, it is the case that DR resources do not all have the same capabilities to be able to respond to short notifications without significant financial or other risk exposure. As indicated in the Joint DR Parties’ Reply Comments filed on April 8, 2016, PJM has recognized the different operating capabilities of DR resources in its requirement for DR resources to respond to a 30-minute dispatch notification by providing an opportunity for the resource to seek exemption, not based upon preference, but based upon operating limitations, for up to 2 hours.⁷

Therefore, it is not a total exemption to respond to the notice. Rather, it is an extension of time to allow the resource to respond safely and without damaging equipment or product. Generation would not be expected to run outside of its operating parameters, especially if in doing so, the resource could render itself inoperable in the future. The same should not be expected from DR resources either.

C. The Joint DR Parties Do Not Agree That The CAISO’s Proposal That Either Resources Have Adequate Energy for Pre-Dispatch or Be Dispatchable Within 20 Minutes is Reasonable.

The Proposed Decision finds reasonable the CAISO’s proposal that the only two criteria for purposes of qualifying for local resource adequacy should be either that resources have adequate energy in order to be available for pre-dispatch on a pre-contingency basis or that they

⁷ Joint DR Parties Reply Comments (April 8, 2016), at pp. 3-6.

should be able to respond with 20-minutes notice on a post-contingency basis.⁸ The Joint DR Parties disagree with this finding. Adoption of these criteria by the Proposed Decision in this manner, in fact, pre-judges the outcome of the investigation of this issue to be undertaken at the CAISO and by the Commission and prematurely discounts other options.

The fact of the matter is there has been no examination at either the CAISO or the Commission to determine if these two criteria are the only two methods of categorizing resource characteristics for local capacity resources. Further, it is not reasonable to adopt these two criteria at this point because the first, adequate energy, has not even been defined. If one of the principle terms of one of the criterion has not even been defined, how can the Proposed Decision, or the Commission decide that it is reasonable?

Rather than put the cart before the horse and prejudge the resource results of both the CAISO Stakeholder Process and any subsequent Energy Division Working Group Process, the Proposed Decision should allow those processes to go forward without prejudicing the outcome. Therefore, the Proposed Decision should be revised to eliminate a finding of reasonableness for the two criteria in CAISO's proposal to the Commission to appropriately await the outcome of the authorized stakeholder and working group processes.

D. The Proposed Decision Cavalierly Dismisses the Significant Differences Between Planning and Operating Criteria.

The Proposed Decision acknowledges that parties raised differences between operating and planning criteria and then roundly dismisses that difference as unconvincing.⁹ If there were no need to differentiate between the two, then why would NERC develop different criteria for each? And, why would NERC not include operating criteria in its planning standards?

⁸ Proposed Decision, at p. 3.

⁹ *Id.*, at p. 35.

The Joint DR Parties understand that it is necessary to observe operating requirements of resources when planning the system; but, operating requirements are important for the real-time operation of the system. By incorporating operating requirements into planning criteria, especially when the criteria are not well developed, it is a basis for excluding certain resources from being considered as planning resources.

In practice, this is exactly what has occurred. The CAISO has used operating criteria, however ill-defined, to exclude DR from being considered as a planning resource. Interestingly enough, however, no other resource has been singled-out for exclusion from the planning process because of its operating characteristics. That is an important consideration.

It is also significant that no other ISO/RTO use operating criteria to exclude resources from consideration in its planning process. The CAISO differentiates its actions from other ISOs because they say they are the only ISO that uses DR as a post-contingency resource. That means other ISOs use DR as pre-contingency resource; but, other ISOs do not require DR to demonstrate that it has “adequate energy” to be dispatched frequently on a pre-contingency basis. That is not the criterion that other ISOs have used to incorporate DR on a pre-contingency basis.

In short, planning criteria is important to provide a long-term perspective of resource needs on the system. Operating criteria is the day-to-day, hour-to-hour, and minute-to-minute requirements for operating the grid in real-time. The significance is when operating criteria are used to prevent a resource from counting as a planning resource.

E. Prior Commission Decisions That Have Adopted a Fast-Response Requirement Have Done So Prior to a Process to Ascertain the Need for DR Resources, in Particular, to Respond Quickly.

The Proposed Decision points to D.14-03-004 and Decisions in the Commission’s Long Term Procurement Plan (LTPP) and the DR Rulemakings as being directionally indicative of the

Commission's desire to move toward or promote fast responding resources. By D.14-03-004, the Commission determined that fast responding resources meant 30 minutes. Yet, none of those decisions were informed by the very process that is soon to ensue, or is ensuing, to make that determination.

Instead, those decisions adopted, on faith, the position of the CAISO that DR resources had to respond quickly, more quickly than any other resource, without any evidence to support that position. Those decisions did not explore whether, and to what extent, DR could be used on a pre-contingency basis. In fact, it is only this Proposed Decision that even provides a scope of required examination of the issue. Therefore, it is not appropriate to refer to those decisions as establishing any precedent for the Commission's final decision here when the very basis of those decisions requires the information that will only be explored *upon issuance* of this decision in this proceeding.

Further, relative to one of the procurement applications resulting from the Commission's LTPP Rulemaking, D.15-11-041 was issued, adopting, with modifications, contracts procured by SCE in its Local Capacity Resource (LCR) Request for Offers (RFO) for the LA Basin (Application (A.) 14-11-012). D.15-11-041's finding that SCE's RFO process was reasonable had the effect of, in turn, approving a 20- minute notification requirement for DR, imposed based on private meetings between SCE and CAISO after-the-fact of initial bids being submitted.¹⁰ EnerNOC, which had challenged this process and outcome, filed an application for rehearing of D.15-11-041 contesting the ability of SCE and CAISO to decide among themselves, without any supporting Commission decision or even CAISO tariff, to impose a 20-minute requirement upon DR resources in the LCR solicitation. EnerNOC pointed to the fact that the Commission has never adopted such a requirement in order for DR resources to qualify as a local capacity

¹⁰ D.15-11-041, at pp. 7, 11.

requirement in the Resource Adequacy Proceedings, and, in fact, had denied application of such criteria to the DR Auction Mechanism (DRAM) pilot.¹¹

However, in the decision on that rehearing application, D.16-05-053, the Commission continues to conclude that the imposition of the 20 minute requirement in the case of SCE's LCR RFOs was "reasonable" seemingly on the basis that these LTPP procurements were somehow different from those in which this requirement had been rejected.¹² However, no rationale is given in support of such a conclusion, and the facts do not support such an inference.

In this regard, the LTPP contracts required DR resources to meet resource adequacy. That was one of the most important criteria to be considered in the solicitation and was, therefore, not distinguishable from the RA valuation generally or the DRAM. It was a long-term RA contract, which, as a condition for selection in the local capacity area, the resource must meet local resource adequacy and be dispatchable with a 20-minute notification. Reliance on any of the LTPP decisions is, therefore, misplaced and should not be used to predetermine the outcomes of the Commission and CAISO processes authorized by the Proposed Decision to actually develop a record on the propriety of a 20-minute notification.

F. The Proposed Decision Finds that It Is Reasonable for CAISO to Use 10 of the 30-Minute Requirement to Restore the System After the Single-Most Severe Contingency Before Transmitting the Dispatch Notice to Aggregators and Customers.

The Proposed Decision appears to determine that CAISO's position to utilize 10 minutes for its own internal assessment before sending a dispatch notice to DR resources and thereby requiring response within 20 minutes is reasonable.¹³ Unfortunately, by agreeing that this is reasonable, the Commission is agreeing that it is reasonable to give aggregators/customers less time to respond. It is not that the Joint DR Parties do not think that the CAISO requires time to

¹¹ A.14-11-012 (SCE LA Basin) EnerNOC Application for Rehearing of D.15-11-041, at pp. 7-10.

¹² D.16-05-053, at p. 7.

¹³ Proposed Decision, at p. 35.

assess the situation on the system and to take appropriate action. It is that, by reaching that conclusion, the Commission is also finding it reasonable to only grant customers 20 minutes to respond.

There are at least two additional transmissions that occur once the CAISO decides to notify the aggregator that it needs to dispatch a resource. The aggregator then performs a very similar task that the CAISO performed. It receives and verifies the dispatch instruction, determines it to be accurate, and then passes the information onto the customers within the affected area. There is some time required to perform that task. Then, the customer must take time to receive and acknowledge the dispatch instruction and then perform reduction measures.

So, in essence, the ultimate customer may have only about 10 minutes to respond to these dispatch instructions. This amount of time may necessitate automation in order for a customer to respond. The problem with assuming automation is the answer is that it reduces the number of participants significantly who are either willing or capable of being automated. Significantly reducing the number of customers and the resulting capacity due to such a constrained operating condition is a significant loss of capability for the system.

G. The Proposed Decision Erroneously Says That No Other Party Provided Analysis To Support a Response Time Other Than 20 Minutes.

The Proposed Decision erroneously first states that no other party provided analysis to support a response time other than 20 minutes, and then continues in the very next sentence that parties had pointed to the response times of other ISOs with 30 minute response times and asserted that there was “no evident reason” why response times should vary across regions.¹⁴ While the Proposed Decision says it agrees with this position, it also says that agreement does

¹⁴ Proposed Decision, at p. 36.

not make the CAISO proposal unreasonable.¹⁵ It states that parties have not provided rationale for how the other ISOs meet their operating requirements.¹⁶

It is not possible in these Comments to completely explain the operating practices of other ISOs as it relates to the pre- and post-contingency planning. However, examination of this issue may be illuminating for the parties, the CAISO, and the Commission. There is also no basis in this record that shows what else the CAISO does in a post-contingency environment beyond providing 20 minutes notice to DR resources. Therefore, the Joint DR Parties recommend that the Commission include this issue -- what other ISOs and CAISO do in both a pre- and post-contingency environment -- in the further examination of this issue.

H. The Proposed Decision's Discussion Regarding What is and Is Not Discriminatory Is Convolutd.

The Proposed Decision seems to dismiss the concerns raised by parties, including the Joint DR Parties, that the requirement that only DR resources be subject to a 20-minute notification requirement is discriminatory.¹⁷ However, the Proposed Decision then states that maybe it could be considered discriminatory for DR not to have been considered as a pre-contingency resource because it was not considered to have adequate energy.¹⁸

Imposing specific performance requirements on one resource type to the exclusion of all others *is* discriminatory. The Joint DR Parties went to great pains to show that, where other markets have fast responding performance criteria, it applies to all resources, not just DR. The fact that some resources cannot meet that criterion due to operational limitations allows that resource to seek an exemption to the rule.

¹⁵ Proposed Decision, at p. 36

¹⁶ Id.

¹⁷ Id., at pp. 36-37.

¹⁸ Id.

In PJM, that exemption could extend a 30-minute response time to 2 hours without reducing the value of the resource to the system. It is not simply a matter of choice. Customers cannot just “choose” not be dispatched within 30 minutes. They must demonstrate that they are not operationally capable of being dispatched within 30 minutes in order to qualify for the exemption. This was important because PJM realized that DR had physical limitations just like any other resource has and honored those limitations, but still provided for the resource to be useful and valuable to the grid.

Therefore, the Joint DR Parties do not agree with the Proposed Decision that simply saying a position or practice is not discriminatory makes it so. Further, the Proposed Decision should be corrected to recognize that DR, just as any other resource, has physical limitations that should be honored and yet still valued for what it provides to the grid.

III. THE PROPOSED DECISION MUST BE MODIFIED TO DECIDE, AND NOT DEFER TO TRACK 2, THE UNBUNDLING OF EFFECTIVE FLEXIBLE CAPACITY (EFC) FROM NET QUALIFYING CAPACITY (NQC).

The Joint DR Parties have significant concerns over the Proposed Decision’s determination to defer a decision on whether and how to unbundle a resources effective flexible capacity (EFC) from its net qualifying capacity (NQC) until “Track 2 or a later time.”¹⁹ The Joint DR Parties have demonstrated:

“A DR resource can provide ramping services or peak reliability – but very few customers would be willing or able to participate in a program that required such a broad level of curtailment so as to provide both. It would be a much better use of this high, loading-order resource to unbundle these requirements and allow a DR resource to either meet RA MOO or EFC MOO, whichever [is most appropriate for] the customer (or aggregation of customers) [to provide].”²⁰

¹⁹ Proposed Decision, at p. 51.

²⁰ Joint DR Parties RA Proposals (January 15, 2016), at p. 3.

Movement continues into a paradigm where event based DR resources are required to be integrated into the CAISO markets in order to have RA capacity value. Yet, this Proposed Decision continues to push down the road key decision on how DR resources effectively can fulfill flexible capacity requirements.

The 2017 DRAM program was authorized to procure local and flexible DR resources in addition the system resources procured in the 2016 DRAM. It is not yet known what level of flexible resources have been procured in this solicitation as initial notifications will not be provided to winning bidders until June 24, 2016. However, the Joint DR Parties believe that if there is a lack of robust offering of flexible RA resources into that solicitation, the lack of resolution on whether and how a resource can qualify as flexible without meeting a system RA MOO requirement will be a stymying force in achieving that transition.

Therefore, while the Proposed Decision continues to defer to an unspecified time a decision on this matter, the Joint DR Parties believe the issue is ripe for decision now. There has been one (2017) DRAM solicitation that did not have the benefit of a resolution on this matter. The 2017 Bridge Funding Proposed Decision issued in R.13-09-011 (DR), which could be voted out by the Commission at its Business Meeting of June 9, 2016, would authorize an additional 2018 DRAM pilot solicitation that could occur as soon as this Fall 2016 (an Advice Letter containing additional documents for the 2018 DRAM would be filed on September 1, 2016).

This third DRAM pilot is intended to provide an additional opportunity to see if the DRAM mechanism is an effective procurement mechanism for RA resources. Yet, by this Proposed Decision, the Commission would again miss the opportunity to evaluate this DR procurement mechanism with workable flexible RA rules for demand response resources.

Another factor contributing to the ripeness of this issue is the expanding flexible RA need in California. The CAISO's Flexible Capacity Requirements (FCR) study, adopted in this same Proposed Decision, is calling for expanding the Flexible RA Capacity needs in 2017. Deferring a decision on this matter again hampers DR and behind the meter customer cited resources from participating in addressing this expanded need. The Joint DR Parties, therefore, recommend modifying the Proposed Decisions to allow the separation of the EFC from the underlying NQC to occur for the 2017 Resource Adequacy compliance year.

IV. CONCLUSION

For the reasons stated above, the Joint DR Parties believe that several modifications to the Proposed Decision are required. The Joint DR Parties, therefore, respectfully request that the Proposed Decision be modified as recommended above, as incorporated in the Joint DR Parties' Proposed Findings of Fact, Conclusions of Law, and Ordering Paragraphs in Appendix A hereto.

Respectfully submitted,

June 8, 2016

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APPENDIX A

JOINT DR PARTIES PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDERING PARAGRAPHS

Comverge, Inc., CPower, EnerNOC, Inc., and EnergyHub (“Joint DR Parties”) propose the following modifications to the Findings of Fact, Conclusions of Law, and Ordering Paragraphs in the Track 1 Proposed Decision of ALJ Dudney issued on May 20, 2016, in R.14-10-010 (RA) Adopting Local and Flexible Capacity Obligations for 2017, and Further Refining the Resource Adequacy Program.

Please note the following:

- A page citation to the PROPOSED DECISION is provided in brackets for each Finding of Fact, Conclusion of Law, or Ordering Paragraphs for which a modification is proposed.
- Added language is indicated by **bold type**; removed language is indicated by **bold strike-through**.

A new or added Finding of Fact, Conclusion of Law, or Ordering Paragraph is labeled as “**NEW**” in **bold, underscoring** capital letters.

PROPOSED FINDINGS OF FACT:

8. [60] CAISO’s proposed requirement that local resources must either be able to respond within 20 minutes or have “sufficient” energy **will be examined as part of the CAISO Stakeholder Process as well as the subsequent Energy Division Working Group Process**~~for pre-contingency dispatch is a logical interpretation of the “when and where needed” tenet of our RA program.~~

11. [60] In order for the implementation of the new requirements to be nondiscriminatory, **the resource obligations should be applied on a comparable basis.**~~both options (pre-contingency dispatch and 20 minute response) must be available to all types of resources.~~ However, the fact that some resources that currently qualify as Local RA capacity may not be

able to qualify under either option, does not necessarily mean that the implementation is either inappropriate or discriminatory.

13. [60] CAISO **should dispatch resources on a post-contingency basis as expeditiously as possible.** CAISO has ~~provided a valid basis for its~~ proposed that it reserve 10 minutes of the 30 minute NERC requirement to reposition the system after a contingency for itself ~~20 minute response time~~, noting that there are numerous activities that it must undertake after a contingency in order to reposition the system for a potential second contingency.

14. [60] CAISO ~~reasonably~~ explains that the exact sequence and duration of these activities may vary, and that in its judgement allowing 10 minutes for ~~those other~~ activities and 20 minutes for resource dispatch is an appropriate standard. **However, this reservation of time for the CAISO removes time from aggregators and the customers providing the DR resource to respond, which may reduce the amount of capacity available.**

20. [61] ~~Offering RA value to non-integrated load would create an incentive counter to our policy of integrating DR programs.~~ The Commission must examine how much capacity that it currently has that it will lose, and/or fail to attract, if only supply-side DR will be eligible for RA value.

23. [61] There are ~~potential~~ efficiency gains from unbundling flexible capacity from system capacity, ~~but there remains significant uncertainty and potential for negative impacts.~~

PROPOSED CONCLUSIONS OF LAW:

10. [64] The CAISO should use open and transparent stakeholder processes to develop clear rules to implement the new requirements for Local RA resources. These processes should include the tasks identified in Section 7.1.4 of this decision. **In addition, the CAISO should explore the pre- and post-contingency actions taken by other ISOs/RTOs.**

13. [64] Unbundling flexible capacity from system capacity should ~~be deferred and taken up in conjunction with consideration of a more durable flexible product~~ be authorized for Demand Response and behind the meter storage resources participating in the CAISO markets. A resource of this type may sell its EFC and have its performance measured solely by its adherence to the EFC market rules.

PROPOSED ORDERING PARAGRAPHS:

5. [67] The Commissions Resource Adequacy program is modified as follows:
- a. Energy Division's revised proposal to use contract capacity for third party Demand Response resources for Resource Adequacy compliance years 2017, 2018, and 2019 is adopted. These resources are exempt from the use of Load Impact Protocols to establish capacity for this period; contract capacity will be used instead.
 - b. All biomass, biogas, and cogeneration facilities, regardless of qualifying facility status, that are able to submit a schedule into the day-ahead market, but are not dispatchable may receive a qualifying capacity value based on the higher of their bid or self-scheduled amounts in the day-ahead market.
 - c. **Demand Response and behind the meter storage facilities participating in the CAISO markets are allowed to sell their resource EFC without being limited by the resource NQC or performing the associated system must offer obligations into the CAISO market.**